***THE HON'BLE SRI JUSTICE R. SUBHASH REDDY**

+WRIT PETITION Nos.35924 & 35925 OF 1998

% 18—04--2007

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WRIT PETITION No. 35924 of 1998

Between

Smt. Sarojamma and ors

…Petitioners

and

The Land Acquisition Officer-cum-RDO, Nagarkurnool, Mahaboobnagar

…Respondent.

WRIT PETITION No. 35925 of 1998

Between

Smt. Sarojamma and ors

…Petitioners

and

The Land Acquisition Officer-cum-RDO, Nagarkurnool, Mahaboobnagar

^ COUNSEL FOR THE PETITIONERS: --Sri V.MANOHAR RAO, ADVOCATE

COUNSEL FOR THE RESPONDENTS: G.P. FOR LAND ACQUISITION

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> Head Note:

? CITATIONS:

HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO :35924 & 35925 of 1998

Dated 18th April, 2007

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Between

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WRIT PETITION No. 35925 of 1998

Between

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The Land Acquisition Officer-cum-RDO, Nagarkurnool, Mahaboobnagar

…Respondents

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO :35924 & 35925 of 1998

COMMON ORDER:

As the issues involved in these two Writ Petitions are inter related, they are heard together and are being disposed of by this common order.

In Writ Petition No. 35924 of 1998, the petitioners, who are the owners of the land admeasuring 9.00 acres covered by Sy.Nos. 518, 520 and 522 of Uppununthala village in Mahaboobnagar District, have questioned the Award passed by the respondent in file No.B/2431/90, dated 25-9-1997 to the extent of treating the same as

consent award.

Writ Petition No. 35925 of 1998 has been filed questioning the order dated 16-10-1997 in Memo No. B/2431/90, by which the request of the petitioners for reference under Section 18 of the Land Acquisition Act, 1894 was rejected.

The petitioners were the owners and possessors of the land admeasuring 9.00 acres covered by Sy.Nos. 518, 520 and 522 of Uppununthala village in Mahaboobnagar District. The said land was a private patta land and the same was taken possession by the respondent on 11-5-1987 for the purpose of construction of Mandal complex. Though possession of the said land was taken for utilization of public purpose, namely, construction of Mandal Complex, but however, no proceedings were initiated under the provisions of the Land Acquisition Act, 1894. The petitioners herein had filed representation on 17-9-1990 before the Mandal Revenue Officer agreeing to take compensation at the rate of Rs.11,000/- per acre. In the said representation, the petitioners had also stated that if the compensation is paid at Rs.11,000/- per acre, they will not seek reference under Section 18 of the Land Acquisition Act, 1894 (for short 'the Act'). In spite of the said representation, when the respondent had not taken any steps for payment of compensation, having waited up to 1994, the petitioners have filed
Writ Petition No. 21063 of 1994 before this Court seeking writ of Mandamus to direct the respondent to initiate land acquisition proceedings and pay compensation. The said Writ Petition was allowed by order dated 22-4-1996 directing the respondent to take steps for acquisition of the said land by issuing necessary notification within a period of three months from the date of the order. Consequent

to the said direction, the respondent had initiated steps under the provisions of the Act and notification under Section 4(1) of the Act was issued and published in the gazette on 26-7-1997. The respondent herein was appointed as Land Acquisition Officer. In the award enquiry, pursuant to the notices issued under Sections 9(1) and 10 of the Act, the petitioners have filed claim petition, claiming compensation at the rate of Rs.50,000/- per acre. The Land Acquisition Officer, while referring to the sale-statistics of the Uppununthala village from 14-5-1994 to 14-8-1997, though recorded finding that the market value of the land under acquisition was at Rs.11,000/- per acre, but however, further taking into account the representation filed by the petitioners on 17-9-1990, passed the Award as consent award under Section 11(2) of the Act. Pursuant to the Award passed by the respondent on 25-9-1997, the petitioners have received the compensation under protest, and further, they have filed an application seeking reference under Section 18 of the Act on 7-10-1997. On their application for reference, the respondent-Land Acquisition Officer passed the impugned order dated 16-10-1997 stating that as the award was passed under Section 11(2) of the Act based on the consent of the petitioners, the application for reference under Section 18 of the Act cannot be considered, which is assailed in Writ Petition No. 35925 of 1999.

It is submitted by Sri V.Manohar Rao, learned Counsel appearing for the petitioners that the award passed by the respondent-Land Acquisition Officer to the extent of terming it as consent award is illegal and arbitrary. It is submitted by the learned Counsel that representation was filed in the year 1990 by the petitioners before initiation of proceedings under the Land Acquisition Act and in spite of

such representation, no steps were taken for payment of compensation and as such, they were constrained to approach this Court and filed Writ Petition No. 21063 of 1994. It is submitted that only consequent to the directions issued by this Court in the earlier Writ Petition No. 21063 of 1994, steps were initiated under the provisions of the Land Acquisition Act, and, as much as the petitioners have not given any consent after initiation of the proceedings under the Land Acquisition Act, there is no basis to pass the award under Section 11(2) of the Act. It is submitted that the representation dated 17-9-1990 filed by the petitioners cannot be the basis for passing the consent award in the absence of any consent given by the petitioners agreeing for any particular rate after initiation of the Land Acquisition Proceedings. It is further submitted that the said representation submitted before the Mandal Revenue Officer on 17-9-1990 is also not in accordance with the Andhra Pradesh Land Acquisition (Negotiations Committee) Rules, 1992. As such, in any event, the said representation cannot be treated as an agreement. It is also submitted that as much as after passing the award, compensation was received under protest and applications were filed seeking reference under Section 18 of the Act, within the statutory period, the order of rejection to refer the matter under Section 18 of the Act for the reasons assigned by the respondent is illegal and arbitrary.

On the other hand, it is contended by the learned Government Pleader appearing for the respondent that, as much as the petitioners themselves have agreed for payment of compensation at Rs.11000/- per acre, it is not open for them either to claim higher compensation than awarded or to seek reference under Section 18 of the Act.

In order to consider the contentions of the parties, it is necessary to examine the provisions of Section 11 of the Land

Acquisition Act, 1894, the relevant portions of which read thus:

> " Enquiry and award by Collector: -(1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any), which any person interested has stated pursuant to a notice given under Section 9 to the measurements, made under Section 8, and into the value of the land at the date of the publication of the notification under Section 4, sub-section (1) and into the respective interests of the persons claiming the compensation and shall make an award under his hand of—
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> (i) the true area of the land;
>
> (ii) the compensation which in his opinion should be allowed for the land; and
>
> (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him; Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf.
>
> Provided further that it shall be competent for appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.
>
> (2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the pesons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement"

A reading of the above provisions makes it clear that after the notification is issued under Section 4(1) of the Act, the Collector is required to conduct award enquiry under Section 11(1) of the Act and to pass award determining the true area, the compensation, which in his opinion, should be paid for the land under acquisition, and also the

apportionment of the said compensation among all the persons known or believed to be interested in the land. But, however, sub-section (2) of Section 11 of the Act provides that if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

In this case, it is stated that the possession was taken on 11-5-1987 for the purpose of construction of Mandal complex. The same is not disputed. When for many years after taking possession of their land, compensation was not paid to the petitioners, the petitioners made a representation before the Mandal Revenue Officer, Uppununthala Mandal, agreeing for award of compensation at Rs.11,000/- per acre. But, in spite of such a representation, no action was taken for payment of compensation. As such, the petitioners had approached this Court in the year 1994 by filing Writ Petition No. 21063 of 1994 and pursuant to the directions issued therein by this Court, notification under Section 4(1) of the Act was issued on 26-7-1997 and award enquiry was conducted and after considering the sales statistics of that village during the period 14-5-1994 to 14-8-1997, award was passed, but, stating it to be a consent award.

Now, it is to be examined as to when and under what circumstances a consent award can be passed. As per sub-section (2) of Section 11 of the Land Acquisition Act, which is reproduced above, notwithstanding anything contained in sub-section (1) of Section 11 of the Act, under which, the Collector is obligated to enquire and pass award, ‘at any stage of the proceedings’, if the Collector is satisfied, he may pass award without making further enquiry basing on the

consent/agreement by the persons interested. If the words ' at any stage of the proceedings' used in sub-section (2) of Section 11 of the Act are carefully considered, they would only mean that award can be passed by the Collector without further enquiry only if the consent is given or agreement is entered into by the land owner subsequent to the notification under Section 4(1) of the Land Acquisition Act and not prior to the initiation of the said proceedings. Therefore, the facts in the case on hand have to be considered in the said context to test the validity of the award to the extent of treating it as a consent award.

As already stated supra, possession of the land of the petitioners was taken on 11.5.1987 for the purpose of construction of Mandal Complex. When compensation was not paid after taking possession, the petitioners made a representation in the year 1990 before the Mandal Revenue Officer, Uppunuthala Mandal agreeing for award of compensation at Rs.11,000/-. But, in spite of such a representation, when no steps were taken to pay the compensation, on the petitioners' filing writ petition and obtaining orders, proceedings were initiated under the land Acquisition Act and notification under Section 4(1) of the Land Acquisition Act was issued in the year 1997. During the award enquiry conducted pursuant to the publication of Section 4(1) notification, the petitioners never agreed for any particular rate of compensation. On the contrary, they filed a claim petition claiming compensation of Rs.50,000/- per acre in the award enquiry. The petitioners also never pressed or referred to their earlier representation in the enquiry conducted pursuant to Section 4(1) notification. Therefore, what transpires from these events is that there is no consent or agreement as to the compensation after issuance of Section 4(1) notification. The representation of the petitioners filed much prior to the initiation of the land acquisition proceedings cannot

be treated as filed after initiation of the proceedings so as to pass a consent award. Therefore, in the absence of any agreement or consent with regard to compensation after Section 4(1) notification, the award passed can only be treated as passed under Section 11(1) of the Act but not under Section 11(2) of the Act.

For the reasons aforementioned, the award impugned in Writ Petition No.35924 of 1998 to the extent of treating it as consent award within the meaning of Section 11(2) of the Land Acquisition Act is hereby quashed and the said award shall be treated as Award passed under Section 11(1) of the Act.

Consequently, the order impugned in Writ Petition No.35925 of 1998 passed rejecting the application of the petitioners for reference under Section 18 of the Land Acquisition Act, on the ground that the Award is passed under Section 11(2) of the Act and as such, no reference can be made to the Civil Court for determination of the compensation, is also liable to be set aside and is accordingly set aside. As much as the petitioners have taken the compensation under protest and filed the application seeking reference under Section 18 of the Act within the stipulated time, the respondents shall refer the claim of the petitioners under Section 18 of the Act to the competent Civil Court for determining the market value within a period of two months from the date of the receipt of a copy of this order.

The Writ Petitions are allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATE: 18-4-2007.
Msnr.

Note: L.R.Copies to be marked: Yes/No.